

**North Carolina Commission for Mental Health, Developmental Disabilities
and Substance Abuse Services
Rules Committee Minutes
DoubleTree Hotel
1707 Hillsborough Street
Raleigh, NC
Thursday, July 24, 2014**

Commission Members Attending:

Kevin Oliver, Anna Cunningham, Roger Dillard, Melissa Gott, Pamela Poteat, Brian Sheitman, Marian Spencer, Don Trobaugh, David Turpin, Amie Brendle, Stephanie Tyson, Linda Warden, Haresh Tharwani

Excused Absences:

Michael Maybee, Peggy Terhune, Carol Vale

Division Staff:

Jim Jarrard, W. Denise Baker, Marta T. Hester, Glenda Stokes, LaTonya Baker

Others in Attendance:

Corye Dunn

Call to Order and Chairman's Report:

Kevin Oliver, Chairman, Rules Committee, called the meeting to order at 9:34am. Mr. Oliver paused for a moment of reflection, issued the ethics reminder and asked members of the Rules Committee and staff of the NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services (NC DMH/DD/SAS) to introduce themselves. Mr. Oliver informed the members that Dave Richard, Deputy Secretary of Behavioral Health and Developmental Disabilities Services, North Carolina Department of Health and Human Services, will be in attendance at the meeting later to provide an update on the Prison Rules.

As part of the Chairman's Report, Mr. Oliver advised that the Committee members are to review the rules and place them into three categories: necessary with substantive public interest; necessary without substantive public interest; and unnecessary. He concluded his report by stating the Rules Committee should have recommendations on the Rules of Procedure (10A NCAC Subchapter 26A) and the Confidentiality Rules (10A NCAC Subchapter 26B) finalized at the end of the meeting to present to the Commission at the August 2014 meeting.

Approval of Minutes:

Upon motion, second and unanimous vote, the Rules Committee approved the minutes of the April 24, 2014 meeting.

NC General Statute 150B-21.3A Periodic Review and Termination of Existing Rules:

W. Denise Baker, Team Leader, Division Affairs Team, NC DMH/DD/SAS, explained that the Rules Committee members were divided into five groups of three members each based upon geographical area to review the rules. She noted that this process is primarily review the rules in light of the three categories specified in statute. However, Ms. Baker recommended that the members note the rules requiring changes, and the changes needed, to facilitate amendment of those rules during the re-adoption process. Ms. Baker advised the NC DMH/DD/SAS Executive Leadership Team (ELT) has identified content/subject matter experts to assist the Committee with its review of the rules. She further added that recommendations from ELT on the rules will be provided at the August Commission meeting. Ms. Baker reviewed the handouts on the Rules of Procedure (10A NCAC Subchapter 26A) and the

Confidentiality Rules (10A NCAC Subchapter 26B). She also asked members to write down their questions which surface during their review to allow her to keep track of issues experienced during the review process. In conclusion, Ms. Baker indicated at the end of the rules review process the following outcomes are possible. Rules determined to be unnecessary will eventually be removed from the NC Administrative Code (Code) without having to be repealed – there is an exception for rules adopted pursuant to federal law; rules determined to be necessary with substantive public interest must be re-adopted to remain in the Code; and rules without necessary public interest will remain in the Code without further action. She also agreed to send the link to the Department of Health and Human Services Database on the DHHS Rules subject to this review process, to the committee members.

Subcommittee Workgroup Meetings and Recommendations:

By motion, second, and majority vote, the Rules Committee adopted the following recommendations:

Rule Number	Rule Name	Determination			Needed to Conform to Federal Law
		Necessary w/ Substantive Public Interest	Necessary w/o Substantive Public Interest	Unnecessary	
10A NCAC 26A .0101	Availability of These Rules	X.			
10A NCAC 26A .0102	Scope		X		
10A NCAC 26A .0103	Petitions	X			
10A NCAC 26A .0104	Notice		X		
10A NCAC 26A .0105	Hearings	X			
10A NCAC 26A .0106	Justification of Rule-Making Decision	X			
10A NCAC 26A .0107	Record of Rule-Making Proceedings		X		
10A NCAC 26A .0108	Fees	X			
10A NCAC 26A .0201	Scope		X		
10A NCAC 26A .0202	Definitions		X		
10A NCAC 26A .0203	Determination of Contested Case Hearing		X		
10A NCAC 26A .0204	Cross-Reference to Departmental Rules			X	
10A NCAC 26A .0301	Scope		X		
10A NCAC 26A .0302	Definitions		X		
10A NCAC 26A .0303	Authority to Make Declaratory Rulings	X			
10A NCAC 26A .0304	Procedures for Requesting Declaratory Rulings	X			
10A NCAC 26A .0305	Action on Request for Declaratory Ruling	X			
10A NCAC 26A .0306	Procedures for Issuing Declaratory Rulings		X		

Rule Number	Rule Name	Determination			Needed to Conform to Federal Law
		Necessary w/ Substantive Public Interest	Necessary w/o Substantive Public Interest	Unnecessary	
10A NCAC 26A .0307	Record of Declaratory Ruling Proceedings	X			
10A NCAC 26A .0308	Notification of Commission		X		
10A NCAC 26B .0101	Purpose and Scope	X			
10A NCAC 26B .0102	General Provisions		X		
10A NCAC 26B .0103	Definitions	X			
10A NCAC 26B .0104	Liability of Persons with Access to Information	X			
10A NCAC 26B .0105	Ownership of Records	X			
10A NCAC 26B .0106	Alterations in the Client Record	X			
10A NCAC 26B .0107	Security of Confidential Information	X			
10A NCAC 26B .0108	Assurance of Confidentiality		X		
10A NCAC 26B .0109	Review of Decisions		X		
10A NCAC 26B .0110	Information Received from Other Agencies/Individuals		X		
10A NCAC 26B .0111	Information Provided to Family/Others				
10A NCAC 26B .0201	Consent for Release		X		
10A NCAC 26B .0202	Consent for Release Form	X			
10A NCAC 26B .0203	Persons Who May Sign Consent for Release		X		
10A NCAC 26B .0204	Verification of Authorization in Cases of Doubt		X		

Rule Number	Rule Name	Determination			Needed to Conform to Federal Law
		Necessary w/ Substantive Public Interest	Necessary w/o Substantive Public Interest	Unnecessary	
10A NCAC 26B .0205	Informed Consent		X		
10A NCAC 26B .0206	Persons Designated to Release Confidential Information		X		
10A NCAC 26B .0207	Documentation of Release		X		
10A NCAC 26B .0208	Prohibition Against Redisclosure		X		
10A NCAC 26B .0209	Release to Human Rights Committee Members	X			
10A NCAC 26B .0210	Release to Area Board Members		X		
10A NCAC 26B .0211	Release of Information by Internal Client Advocates		X		
10A NCAC 26B .0301	Notice to Client		X		
10A NCAC 26B .0302	Persons Designated to Disclose Confidential Information		X		
*10A NCAC 26B .0303	Documentation of Disclosure	N/A	N/A	N/A	
10A NCAC 26B .0304	Prohibition Against Redisclosure		X		

Mr. Oliver requested content experts on both rules --- Rules of Procedure and the Confidentiality Rules -- be presented at the Full Commission meeting in August. He also expressed gratitude to Dr. Greg Olley, Commission Chairman, for his leadership and noted his term is expiring. Ms. Cunningham requested clarity regarding the meaning of “regulated public”. Ms. Baker indicated that Mr. Rich Slipsky, Attorney General’s Office, will be invited to address this issue. Mr. Oliver noted that cost of the prison rule amendments are such that work on the rules will need to be revisited at a later date.

Public Comment Corye Dunn, Attorney, Disability Rights NC, expressed concern about the recent death of an inmate transported from Alexander Correctional Institution to a facility in Raleigh. She added that the Commission has a responsibility to look at the prison rules and offered Disability Rights as a resource.

Adjournment *There being no further business, the meeting adjourned at 11:53am.*